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COMMITTEE AGAINST TORTURE

Eighteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 283rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 29 April 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.283/Add.1

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Ukraine (CAT/C/34/Add.1; HRI/CORE/1/Add.63)

1. At the invitation of the Chairman, Mrs. Pavlikovska, Mrs. Denysenko, Mrs. Kovalska, Mr. Semashko and Mr. Gusakov (Ukraine) took places at the Committee table.

2. The CHAIRMAN welcomed the Ukrainian delegation and invited it to introduce the third periodic report of Ukraine, which was contained in document CAT/C/34/Add.1.

3. Mrs. PAVLIKOVSKA (Ukraine) said that at the time of the submission of its initial report, in January 1990, Ukraine had been a part of the Soviet Union. The third periodic report was the second submitted by Ukraine since its accession to independence, five years after its second periodic report. In those five years, Ukraine had enacted new legislation for the protection of human rights. Regarding matters of interest to the Committee, there had been very significant developments. The Ukrainian authorities hoped that the dialogue with the Committee against Torture would make it possible to define practical ways of consolidating those developments and bringing Ukrainian standards further into line with international standards.

4. Ukraine had become a member of the Council of Europe in November 1995 and had thereupon made a number of political commitments, in particular concerning the reform of its legal system. She wished to comment at greater length on some of the articles of the new Constitution, which had been submitted to experts of the Council of Europe and the Institute of Comparative Law in Lausanne and had received a very favourable response from them. Several articles of the Constitution referred specifically to provisions of the Convention. For example, article 2 of the Convention, under which an order from a superior officer could not be invoked as a justification of torture, was reflected in article 60 of the Constitution, which provided that no one was obliged to obey the orders of a superior officer if those orders constituted an offence. Under article 25 of the Constitution, no Ukrainian citizen could be exiled; that provision was consistent with article 3 of the Convention. Article 55 provided that every Ukrainian citizen had the right to lodge a complaint in the courts against actions by public officials. Furthermore, once domestic remedies had been exhausted, any citizen could apply to an international body of which Ukraine was a member. Citizens could thus avail themselves of a range of legal remedies which protected them against the violation of their rights and enabled them to obtain redress for any injury caused by an arbitrary decision of the State (art. 56 of the Constitution, which corresponded to art. 14 of the Convention). Article 59 guaranteed free legal assistance as well as the freedom to choose one's own counsel. Observance of the principle of the presumption of innocence was assured by article 62 of the Constitution. More generally, the Constitution provided that the State was responsible to the citizen and that protection of the individual's rights and freedoms was the fundamental duty of the State.

Article 8 of the Constitution established the primacy of the law and article 9 provided that international treaties ratified by Ukraine formed an integral part of Ukrainian legislation. The Ukrainian Constitution was extremely recent and numerous legislative instruments were being drafted to align domestic provisions with European and international standards.

5. Ukraine had signed Protocols 1, 4 and 7 to the European Convention on Human Rights on 19 December 1996; a Council of Europe working group was currently studying Ukrainian legislation with a view to identifying any incompatibilities between that legislation and international standards. The necessary instruments for the ratification of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty had been submitted to the Supreme Council in April 1997 and should be ready by the end of May 1997. Ukraine had signed the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 2 May 1996 and that Convention had been ratified by the Supreme Council of Ukraine on 24 January 1997.

6. Ukraine was further debating the important question of the abolition of the death penalty. A commission had been set up for that purpose. A bill amending the provisions of the Penal Code relating to all aspects of the death penalty had been submitted to the Supreme Council in January 1997. Pending its adoption, a moratorium on the execution of death sentences was proposed. The text of the bill amending the Penal Code had been distributed to the members of the Committee.

7. Another important aspect of the reforms under way in Ukraine concerned the improvement of the judicial system, and the first phase of that exercise had now been completed. The institution of the Public Prosecutor's Office had become more democratic and more in conformity with European standards. The second set of measures, which were being implemented with the active cooperation of the Ministry of Justice and the Ministry of Internal Affairs, aimed in particular to transfer responsibility for prisons from the Ministry of Internal Affairs to the Ministry of Justice. A new penal code, whose provisions should be consistent with those of the Convention, was in preparation and would take into account the provisions of articles 1 and 4 of the Convention. The draft penal code also established the responsibility of the State in cases where a public official was found guilty of acts of violence or degrading treatment, and set penalties for the perpetrators of such offences, which could be imprisonment for 3 to 8 years, or for 5 to 12 years if the acts in question had grave consequences. Under article 345, law enforcement officials attempting to extract confessions by force bore special liability. Furthermore, a series of provisions were made to prevent the use of torture in the armed forces, including sanctions such as deprivation of liberty for three to five years in cases of abuse of power vis-à-vis subordinates and penalties for ill-treatment of civilians. Anyone executing an order that constituted an offence would be held criminally liable. It should be pointed out that all those provisions appeared for the first time in Ukrainian criminal law and represented a major step forward for the country.

8. With regard to penal institutions, 18 laws and 13 governmental decrees had been adopted between 1994 and 1995 with the aim of humanizing prisons and penalties. An Act of 1994 amending the law on the serving of sentences

provided in particular for staying the execution of a sentence against a pregnant woman or the mother of a child under three years of age. In addition, there were provisions to improve everyday life by increasing the authorized number of parcels or telephone calls and temporary release entitlements. Identical measures applied to corrective labour institutions. In 1996, more than 5,000 inspections had been made in Ukrainian penal institutions and more than 7,000 breaches of the rules had been detected. Some 4,700 measures had been taken to remedy those violations; 2,000 officials had been disciplined and 22 had been prosecuted. Furthermore, 269 decisions had been annulled; 92 persons unjustifiably held in custody had been released and 219 convicts had been reprieved. In June and August 1996, the Council of Europe had sent a mission to evaluate the Ukrainian prison system, and it had written a report deploring certain situations; measures were being considered to remedy them.

9. In conclusion, she hoped that the examination of her country's third periodic report would contribute to a better understanding of the difficulties encountered by Ukraine in establishing a State based on the rule of law and to consolidating what had thus far been achieved, despite the serious economic problems facing Ukraine.

10. Mr. YAKOVLEV (Rapporteur for Ukraine), after having thanked the Ukrainian delegation for its presentation, said that the elaboration of the new Constitution and the drafts of a penal code, code of criminal procedure, code of civil procedure and code for the application of penalties were to be welcomed. The Committee was, however, interested above all in the provisions currently being applied, since the new provisions, however satisfactory, would not come into force until after the year 2000. In that regard, the political will to reform the judicial system was crucial in the period of transition to democracy. The provisions of the Convention - and especially of article 1 - were nonetheless far more precise than the new articles of the Penal Code designed to increase criminal responsibility for administrative offences and, in particular, article 166, which established criminal responsibility for abuse of power or authority (para. 17 of the report). Moreover, the question of intimidating or exerting pressure on a person for the purpose of obtaining from him or a third person information or a confession did not appear to be reflected in the new provisions. He would also like further details concerning the Pre-Trial Detention Act, the Act amending the Code of Criminal Procedure (enhancing the right to defence) and the Act on providing redress for injury arising from unlawful actions by investigative or judicial examining bodies, the Public Prosecutor's Office or the courts (para. 13 of the report). It was stated in paragraph 43 of the report that the majority of articles in the Penal Correction Code had been amended and amplified to make the conditions of confinement for convicts more humane, to define the legal status of convicts more precisely and to safeguard their rights and abolish excessive restrictions. What were those excessive restrictions? Under the Act concerning redress for injuries caused by the unlawful actions of investigative or examining bodies, the Public Prosecutor's Office or the courts, Ukrainian citizens were entitled to compensation for any injury sustained (para. 62 of the report). Could the Ukrainian delegation provide some examples of compensation granted in that connection?

11. The Committee would also like to know whether the Convention had been translated and published in an official gazette or simply made public in unofficial form.

12. Lastly, he asked how conditions of arrest and detention were actually monitored in the country and whether it was true, as had been reported to the Committee, that lawyers could not represent their clients during the preliminary investigation without the agreement of the persons in charge of the inquiries. It should be pointed out that the economic difficulties facing Ukraine in no way exempted it from discharging its obligations under international treaties to which it was a party, including those assumed under the Convention.

13. Mr. PIKIS (Alternate Rapporteur for Ukraine), confining his comments to the implementation of articles 11 to 16 of the Convention, said that the Committee would like further information about the constitutional framework for the protection of human rights and, in particular, the rights safeguarded by the Convention. Since the Constitutional Treaty concluded between the Supreme Council and the President on 8 June 1995 was the basic document guaranteeing the protection of human rights and the implementation of the State's international obligations, he would like to know its current status and whether he would be right in thinking that the Constitution, as described in general terms by the Ukrainian delegation, was already in force.

14. Details would also be welcome on the legal framework within which the Public Prosecutor's Office and the Ministry of Internal Affairs operated. According to the information contained in the core document (HRI/CORE/1/Add.63) and in the third periodic report, they were the principal organs responsible for ensuring protection of the rights safeguarded in the Convention. Were those organs independent from the executive and specifically from State organs charged with the management of detention centres and prisons?

15. Notwithstanding a number of measures aimed at giving effect to article 11 of the Convention - provisions ensuring access to counsel at every stage of the investigation (para. 63 of the core document), procedure for testing the legality and grounds of arrest (para. 37 of the report), Cabinet decree of 26 January 1994 approving a programme intended to bring conditions in detention centres and prisons into line with international standards, and other measures and procedures mentioned in paragraphs 53 and 54 of the report - the Committee noted the absence of a body specifically entrusted with overseeing the system of arrest, detention and imprisonment. The measure outlined in paragraph 48 of the report aimed at placing the penal correction system under the authority of the Ministry of Justice, or of an independent body was a move in the right direction and the latter option would be preferable.

16. Article 12 of the Convention also called for an independent body to hold an impartial investigation whenever there was reasonable ground to believe that an act of torture had been committed in the territory of the State. The Committee was unable to determine from the information provided in paragraphs 57 and 58 of the report whether the Public Prosecutor's Office enjoyed sufficient independence from the State authorities and law enforcement

agencies to fulfil that task successfully. It should be recalled that State parties were required, in their reports, to inform the Committee of developments since the submission of the previous report concerning institutions charged with the enforcement of the Convention, the changes made in rules, regulations and practices, alleged violations and their investigation, violations ascertained and remedial measures taken. More specifically, the Committee would like to know the legal prerequisites for detention and the maximum length of detention without trial, as well as the Ukrainian authorities' perception of the value of the monthly interviews held by officials of the Public Prosecutor's Office with detainees and convicts and the results of such interviews.

17. With regard to the implementation of article 13 of the Convention, the Committee would like to know what authorities were empowered to receive complaints from persons claiming to be victims of torture, what was the status of the officers assigned for their investigation, what was the time limit for the inquiries to be completed and what measures were taken against officials found guilty of acts of torture or cruel, inhuman or degrading treatment. In addition, he requested information about the number of complaints made during the period covered by the third periodic report, and asked whether there was a right to private prosecution and, if so, whether the complainant was assisted in any way by the State.

18. Concerning the right of victims of torture to redress (art. 14 of the Convention), the Committee had taken note of the Act on the procedure for redress in respect of injuries caused by unlawful actions of organs of the State, and of article 440-1 of the Civil Code, which provided for compensation for moral damages to citizens or organizations arising from infringements of their lawful rights by third persons (paras. 71 and 72 of the core document). The new article 53-1 of the Code of Criminal Procedure making it incumbent upon examining bodies, investigators, public prosecutors and judges to take measures to provide redress for injuries caused to citizens by their illegal actions (para. 60 of the report) was also relevant to the implementation of article 14 of the Convention. However, not enough information was given and the Committee would like to know what the Ukrainian authorities meant by "moral damages", whether there were any statutory limitations to compensation, whether the injured party could institute proceedings in a civil court and whether a right of civil action survived when compensation had been granted by a criminal court. Were there specialized institutions providing medical and psychological treatment for victims of torture? How many cases had been brought before the courts during the period covered by the report, what had been the outcome and what sums had been awarded in compensation to the victims?

19. With regard to the implementation of article 15 of the Convention, the Committee would like to know whether there were institutional safeguards against the use in evidence of statements obtained by torture, and would appreciate details of any cases where pressure had allegedly been brought to bear on subjects to obtain confessions. In that connection, the Committee was concerned by the cases of Sergey Vysochansky and Vasily Mikhaylovich Krivonos, referred to in a report by Amnesty International, and wondered what rules applied to ascertain the voluntariness of a statement and whether a conviction could be founded solely on a confession.

20. In respect of the preceding articles, the information provided on article 16 of the Convention was very scanty. Paragraph 65 of the report indicated that all acts constituting cruel, inhuman or degrading treatment or punishment were prohibited throughout the territory of Ukraine, but nothing was said about constitutional safeguards and the criminalization of such conduct or about the conditions in detention centres and prisons. Without such information the Committee could not assess whether the State party had discharged its obligations under article 16. Amnesty International referred to the case of Mikolaj Szpakowicz, who had died allegedly after being beaten by the police, and also described the situation of HIV-positive inmates in the Donetsk prison, who were allegedly being denied adequate medical and dental care. Could the Ukrainian delegation provide some clarification on those cases?

21. The most disturbing aspect of Ukrainian law, however, was the provision of the death penalty for a multitude of offences, including attempts on the life of militiamen, national guardsmen and members of the armed forces, as well as an ever-increasing number of death sentences imposed and the execution of a large number of those sentenced to death. Such executions continued in spite of the commitment made by Ukraine to the Council of Europe on 26 September 1995 to introduce a moratorium on executions. Ukraine was ranked the second country in the world for the number of executions and neither the commitment made to the Council of Europe nor the condemnation by the Parliamentary Assembly in January 1997 had achieved the desired effect. Death sentences and executions in Ukraine had been the subject of a number of reports and urgent appeals by Amnesty International in 1995, 1996 and 1997. Paragraph 12 of the report (CAT/C/34/Add.1) indicated that death sentences and executions were on the increase, and according to a report published on 11 February 1997 by Amnesty International, 167 people had been executed in Ukraine in 1996. Those facts were of serious concern and he would like the Ukrainian authorities to state clearly their position on the application of the death penalty and the crimes for which it was provided, as well as on the number of executions. Lastly, he drew attention to allegations made by Amnesty International in a note concerning the third periodic report of Ukraine, which stated that some prisoners in labour camps were being used as guinea pigs for the training of special military or paramilitary units; Amnesty International also reported unacceptable delays in judicial proceedings. All of those allegations required explanation.

22. Mr. SORENSEN associated himself with the questions already put to the Ukrainian delegation. He welcomed the anticipated signature by Ukraine of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

23. Paragraph 34 of the report (CAT/C/34/Add.1) did not deal with questions of training and paragraph 35 provided very little information in that regard. The training and education called for in article 10 of the Convention was absolutely crucial, however, especially for a country in transition. He would therefore like more specific information about how instruction in the prevention and suppression of torture was provided in schools of medicine, for example, and on how the members of the police, judges and border guards were

trained in that field. In particular, it would be useful to know whether those officials were informed about the kind of behaviour likely to be exhibited by persons who had undergone torture.

24. Article 16 of the Convention stipulated that the obligations under articles 10, 11, 12 and 13 applied not only to torture but to any cruel, inhuman or degrading treatment or punishment. Thus, it was not only torture but all such forms of treatment that had to be prevented in prisons and police stations. He had been very encouraged to learn of the various safeguards applicable to police custody - for example, the right of the detainee to be informed of his rights and of the reasons for his arrest, or the right to contact a lawyer and to be examined by a physician of his own choosing - and yet it had been pointed out by Mr. Yakovlev that such safeguards would take effect only in five years' time. If that were indeed so, what was the situation at present, what rights did a person now being held at a police station have in practice and what specific arrangements had been or were being made to apply current and future safeguards? Did such safeguards exist in writing and would there be any supervision of their enforcement? Even if the law did not make such provision, consideration might already be given to including a rule in the police regulations stating that detainees enjoyed certain safeguards. Furthermore, as pointed out by Mr. Pikis, the inspection of police stations was an essential means of prevention, and it was important to know what methods of inspection were employed in Ukraine.

25. The figures concerning the prison population in Ukraine were alarming: there were 178,000 prisoners for 52 million inhabitants, whereas European countries of comparable size, such as France or the United Kingdom, had about 50,000. What was Ukraine doing to remedy that situation? A first step towards resolving the problem would be to expedite judicial procedures and thus reduce the number of persons held in detention pending trial. Another disquieting fact was that 413 prisoners had reportedly died in nine months during 1996; he would like to know the number of deaths in prison in 1995 and 1996. Other reports suggested that cases of ill-treatment were not uncommon in prisons. It was important to know how many warders had been accused of acts of ill-treatment in 1995 and 1996, and how many had been convicted for such acts. There, too, inspections were a crucial element in prevention, including inspections by non-governmental organizations, which had proved extremely useful in many countries.

26. Mr. Pikis had discussed at length the implementation of article 14 of the Convention. It was particularly important in that regard to know what provision was made for the rehabilitation of victims, especially in a country in transition where the innocence of all the people ill-treated by the former regime now had to be recognized. With regard to compensation, did victims first have to identify their torturers - which was not always possible - or could they simply apply to the State for compensation? Lastly, concerning medical rehabilitation, he suggested that with the transition to a new system there was soon likely to be a much greater demand, since victims had not previously had the possibility of requesting medical care.

27. In conclusion, he wished to point out that the United Nations Voluntary Fund for Victims of Torture needed financial support from all quarters. Ukraine's economic situation would perhaps allow it to make only a very modest

contribution, but a gesture would demonstrate its will to respect and assist victims of torture. While Ukraine did not have the means to reform its system overnight, that gesture would have a great symbolic value; moreover, it should not be forgotten that other measures cost very little - and stopping prisoners from being beaten cost nothing at all.

28. Mr. REGMI pointed out that the States parties to the Convention had committed themselves to ensuring that all acts of torture and any participation in such acts were treated as offences in domestic criminal law. Paragraphs 14, 16, 17, 18 and 23 of the report made it clear, however, that there was no definition of torture in Ukrainian domestic law, which also provided no appropriate penalty or adequate compensation. The report did not follow the Committee's general guidelines; during the consideration of Ukraine's second periodic report, the Committee had requested detailed information about measures taken or planned with a view to the concrete implementation of the provisions of the Convention, as well as the texts of the Constitution, codes and new laws relevant to the Committee's work. That information was not contained in the report, and the members of the Committee could not be satisfied with mere promises. He therefore hoped that the Ukrainian Government would comply with the requests made by the Committee.

29. Among the measures to be commended were the signature of the European Convention for the Protection of Human Rights and Fundamental Freedoms and some of the protocols thereto, as well as the anticipated signature of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the signature of a Commonwealth of Independent States convention concerning judicial assistance and legal relations in civil, family and criminal matters, and of agreements on judicial assistance with various countries.

30. Article 15 of the Convention required each State party to ensure that no statement obtained by torture could be used as evidence in a judicial proceeding. However, paragraph 64 of the report indicated that neither the law nor practice had changed in that regard. Thus, confessions obtained under torture could be taken into consideration by the Ukrainian criminal courts, and he endorsed the comments made by Mr. Pikis on that question. A case in point was that of Mr. Vysochansky, who was reported by Amnesty International to have been forced to sign a confession under duress; that statement had allegedly been taken as conclusive proof and served as the basis for sentencing the person concerned to death. If things really had happened in that way, there was clearly a violation of article 15 of the Convention, and he would appreciate clarification from the Ukrainian delegation on the matter. He was, however, pleased to note that Ukraine had decided to abolish the death penalty.

31. Mrs. ILIOPOULOS-STRANGAS, associating herself with the questions put by other Committee members, said that she would confine herself to a few points only. First, the new Constitution of Ukraine established that only the courts would be empowered to issue warrants, but those provisions would not come into force for another five years: did the Constitution stipulate that the transitional period could not be extended? Several other constitutional provisions expressly stated that various transitional arrangements could not be renewed and she would like to know whether that was also the case in the

present instance. Furthermore, did the Constitution place a limit on the total period of detention, or were there plans to set such a limit statutorily?

32. With regard to article 1 of the Convention, it was stated in paragraph 14 of the report that "in instances provided for under international agreements", the Ukrainian courts applied the law in accordance with the agreements concerned. She wondered what was meant by that statement. Since it was domestic law that defined the rank of international treaties in the internal legal system, what was the position of international treaty law in Ukrainian domestic law? Treaties ratified by Ukraine appeared to have the same value as national legislation: did that mean that an act passed after the ratification of a treaty could take precedence over that treaty? To avoid any possible conflict between a treaty and a law made subsequent to ratification of the treaty, many States had given treaties a higher status than domestic law.

33. It would be useful to know more about the people's assessors referred to in paragraph 15 of the report. They were apparently neither judges nor persons with legal training and the question that arose was whether there were courts composed mainly of non-jurists. She would also like some explanation of the meaning of the phrase "... working in conditions that exclude extraneous influence on the courts" in the same paragraph. Were judges irremovable and independent, or were they appointed according to other criteria?

34. One of the cases referred to by Amnesty International, that of Mikolaj Szpakowitz, raised a further question. Amnesty International indicated only that, as a result of the affair, a police officer had been tried and sentenced to eight years' imprisonment for abuse of power. That characterization seemed inappropriate to a case involving a man's death, especially since it might be asked whether the practice in the Ukrainian criminal justice system would be for the police officer to be released after, say, two years.

35. Lastly, she too would like an answer to the question concerning the special instructions from the Ministry of Internal Affairs which had reportedly authorized the training of special units inside labour camps. Such directives were incompatible not only with the Convention, but also with the International Covenants on Human Rights and with a whole series of instruments governing the treatment of prisoners.

36. Mr. BURNS commended the efforts made by Ukraine to establish a penal system based on humanitarian values. He had been especially pleased to hear that there was a bill calling for the abolition of the death penalty. One of the issues that had not yet been explored was whether, besides the regular police force, Ukraine had a security police with special powers of arrest. He would also like to know whether the courts had already awarded any damages arising from acts of torture or cruel treatment. Furthermore, since Ukraine did not extradite its own nationals, what would the authorities do if a Ukrainian accused of an act of torture in a foreign country returned to Ukraine? Could they, and would they, prosecute that person?

37. He was disappointed that the new articles of the Penal Code did not define torture itself as an offence. Taken together, the offences that were enumerated, such as abuse of power or authority accompanied by violence, perhaps covered the idea of torture within the meaning of the Convention, but that classification did not make it possible to measure the extent of torture or keep statistics on the subject. Lastly, he noted that Ukraine had not recognized the Committee's competence under articles 20 and 22 of the Convention. Among the countries of the former USSR which had ratified the Convention, only Ukraine and Belarus had not made the declarations provided for in those articles.

38. Mr. ZUPANCIC said that he would like more information about the terms of police custody and the length of pre-trial detention. He asked whether a suspect had the right to consult a lawyer while in police custody, which could last for up to 72 hours. It would be recalled that most cases of torture occurred during police questioning. Regarding the duration of provisional detention following police custody, he would like to know what was the maximum length of time permitted before formal charging, and between charging and the opening of the trial. Was there any sanction if the hearing was not held within a reasonable period of time?

39. In addition, he asked why the Constitutional Court had not yet been established and whether it was expected that the Court might deal not only with theoretical points of law but also with specific complaints and consider, for example, whether a detainee could lodge a certain type of complaint of torture; such a procedure existed in some countries and would enable the Court to play a role in the protection of human rights.

40. The CHAIRMAN, noting the very large number of questions asked, invited the Ukrainian delegation to reply to them at the next meeting.

The public part of the meeting rose at 12.20 p.m.